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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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\_\_\_\_\_  
The State of Washington, et al.,

Appellants,

v.

Federal Way School District No. 210, a municipal corporation, et al.,

Respondents.

\_\_\_\_\_  
BRIEF OF AMICUS CURIAE  
\_\_\_\_\_

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## I. INTRODUCTION

In *Brown v. Board of Education*, 347 U.S. 483, 74 S. Ct. 686, 98 L. Ed. 873 (1954), the U.S. Supreme Court declared that “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the State has undertaken to provide it, is a right which must be made available to all on equal terms.” 347 U.S. at 493 (emphases added).

Consistent with the principles announced in *Brown*, over thirty years ago this Court held that the method Washington State used to fund basic education violated the Washington Constitution. In *Seattle School Dist. No. 1 v. State*, 90 Wn.2d 476, 585 P.2d 71 (1978), this Court held that the State’s reliance on special levies to pay for basic education violated Article IX, Sections 1 and 2 of the Washington Constitution, because the use of levies resulted in some districts having more money to spend on basic education than others, and made school funding dependent on the whim of voters. *Id.* at 525-26.

Rather than fixing the funding inequities identified in *Seattle School District*, the Washington State Legislature has codified them. Since the enactment of the Basic Education Act in 1977, the associated appropriations bills have assigned salary allocation levels to the school districts, and these allocation levels determine the amount of funding the

districts receive for basic education. The salary allocation levels are a direct result of the salaries the districts were paying their staff in 1976-77, and thus are a direct result of the method of funding basic education that *Seattle School District* declared unconstitutional.

Assigning salary allocations based on school districts' 1976-77 salaries has caused dramatic inequities in the amount of funds the school districts have available to provide basic education: for example, for the 2006-07 school year, Respondent Federal Way School District received \$7,059,678 less than it would have received had the Legislature assigned Federal Way the highest salary allocation levels. CP 109-15. There is no logical reason for such funding variations.

The League of Education Voters Foundation ("LEV Foundation") strongly urges this Court to declare that Article IX, section 2 of the Washington State Constitution requires the Legislature to use a reasonably uniform method for funding basic education, and as a result, the salary allocation levels the State currently uses to disburse basic education dollars violate Article IX, Section 2. The State has had over 30 years to fix the problem and provide fair funding, as *Seattle School District* requires, and the children of Washington cannot wait any longer.

## II. STATEMENT OF THE CASE

LEV Foundation adopts Respondents' Statement of the Case.

### III. INTEREST OF AMICUS

LEV Foundation is a statewide, nonpartisan organization dedicated to making the preschools, public schools, and colleges in Washington State the best in the nation. Injecting reasonable uniformity into the method for allocating the funds school districts receive for basic education remains one of LEV Foundation's primary objectives. LEV Foundation believes that this case has great significance not only for its organization but for all Washington citizens.

### IV. ARGUMENT

The Washington Constitution is unique among state constitutions in that it makes "ample provision for the education of all children residing within its borders" the "paramount duty of the state." WASH. CONST., art. IX, sec. 1 (emphasis added); *see also Seattle School Dist.*, 90 Wn.2d at 499.

Of importance for this litigation, the Constitution requires that the State's paramount duty be fulfilled through "a general and uniform system of public schools." WASH. CONST., art. IX, sec. 2. The Washington State Legislature has failed to fulfill its obligation under Article IX, section 2 to establish "a general and uniform system of public schools" because it does not use a reasonably uniform method for funding basic education, but rather disburses funds according to salary allocation levels that are based

on arbitrary events and an unconstitutional method of funding from thirty years ago.

**A. Article IX, Section 2 of the Washington State Constitution Requires the State to Use a Reasonably Uniform Method for Funding Basic Education.**

**1. The Plain Language of the Constitution Requires Use of a Uniform Method for Funding the Public Schools.**

The full text of Article IX, section 2 reads:

The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.

WASH. CONST., art. IX, sec. 2. The first sentence of section 2 requires the Legislature to use a uniform method to fund the public schools. The American Heritage Dictionary defines “provide” as “[t]o furnish; supply,” as in “provide food and shelter for a family.” AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2000).<sup>1</sup> Something is “uniform” if it is “[a]lways the same, as in character or degree; unvarying.” *Id.*

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<sup>1</sup> This Court quoted dictionary definitions in interpreting the similarly unambiguous language in Article IX, section 1, declaring that amply providing for education is the “paramount” duty of the State. *Seattle School Dist.*, 90 Wn.2d at 510-11.

The Legislature can only satisfy its duty to “furnish” a system of public schools that is “[a]lways the same, as in character or degree” by providing reasonably uniform funding for such schools.<sup>2</sup> The mere act of creating teacher certification criteria, curriculum standards, and instructional hour requirements is not providing a school system that is always the same in character or degree, contrary to the State’s argument. *See* Appellants’ Opening Br. at 23. For the schools to be the same or uniform, they must have funding that provides equal opportunities for basic education, and it is the Legislature’s duty to supply such funding.<sup>3</sup>

Indeed, when the obligation to “provide for a general and uniform system of public schools” is looked at in the context of the rest of Article IX, it becomes even clearer that the Constitution requires use of a reasonably uniform method of funding the public schools. Every section of Article IX relates to the State’s obligation to fund the public schools. The third sentence in section 2 explicitly dedicates certain funds to support the common schools. Section 1 requires the State to make “ample provision” for education. Section 3 relates to the “common school fund.”

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<sup>2</sup> Importantly, the State agrees that a “uniform system” is one with “uniform educational content.” *See* Appellants’ Opening Br. at 23.

<sup>3</sup> To arrive at a “uniform system of public schools,” the actual dollars provided per student will vary from district to district to account for such factors as the different needs of the student bodies (e.g., ESL classes, special education classes) and the experience levels of the staff, among other factors. In other words, different levels of funding arising from “differences in educational costs” are expected, as the trial court held. Opinion at 6.

Section 4 prohibits sectarian control of schools that receive public funds. Section 5 makes losses suffered by the common school fund a state debt. There is no reason to believe that the first sentence of section 2 does not also relate to funding.

**2. The Washington Supreme Court has Repeatedly Interpreted Article IX, Section 2 as Requiring a Uniform Method of Funding for the Public Schools.**

**a. The *Seattle School District* Decision Requires a Uniform Funding Method.**

In the *Seattle School District* decision, the Washington Supreme Court held that State's method for funding public schools violated Sections 1 and 2 of Article IX of the Washington Constitution. According to the Court, the Constitution requires the State to use dependable and regular tax sources to pay for the basic education of children in a general and uniform school system, and the State was not complying with these obligations. *Seattle School Dist.*, 90 Wn.2d at 521-22, 524-26 (Sections IX and XI of the Opinion).

For the 1975-76 school year, the State depended on the school districts to pass local levies to close the gap between the actual cost of providing basic education and the money the State provided for such purposes. However, the school districts were not always able to raise sufficient funds through levies, particularly districts with low assessed

valuations of real property. The inability to get the required funds through levies put “public school education” in such districts “in immediate danger” and led to increased student-teacher ratios and reduced services, among other problems. *Id.* at 524-25. In other words, because of the school funding system in place at the time, the schools did not have “uniform educational content,” as such content depended on the district’s ability to get levies passed. Thus, the Legislature was not satisfying its duty to “provide” a uniform system of schools, and the funding scheme violated sections 1 and 2 of Article IX. *Id.* at 526 (“variations” in funding as a result of the dependence on levies violated the Constitution)<sup>4</sup>; *id.* at 546 (Article IX, section 2 requires “uniformity in the state’s educational system”; the Constitution requires the State to provide an educational system in which “each child is afforded an equal opportunity to learn”) (Utter, J., concurring).<sup>5</sup>

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<sup>4</sup> As the cited page demonstrates, Article IX, section 2 was clearly at issue in *Seattle School District*. The State’s argument to the contrary is mystifying. See Appellants’ Opening Br. at 24.

<sup>5</sup> Like the harms this Court identified in *Seattle School District*, 90 Wn.2d at 524-25, the disparity in basic education dollars that the State provides to the districts creates at least the following harms: (1) it is harder for districts that are assigned low salary allocation levels to recruit new teachers and staff and to retain existing staff; (2) resentment from staff that are paid less than counterparts in neighboring districts can makes strikes more likely; and (3) if districts use levy money to make up the shortfall in basic education salaries, the enrichment programs that the levy money could have supported are necessarily cut.

**b. The Decision in *Island County Committee on Assessment Ratios* Requires a Uniform Funding Method.**

Although the *Seattle School District* opinion is the “starting point for understanding the scope of the State’s obligation to fund public education,” Appellants’ Opening Br. at 4, that case was not the first time that this Court held that Article IX, section 2 requires the State to use a reasonably uniform method for funding basic education.

In *Island County Committee on Assessment Ratios v. Department of Revenue*, 81 Wn.2d 193, 500 P.2d 756 (1972), the plaintiffs complained about the formula used to calculate the State’s contribution to the school districts, the purpose of which contribution was to equalize the funding for the schools. 81 Wn.2d at 199-201. The Court held that the formula was constitutional because it “advances the idea of equalizing educational opportunity by giving preference to those districts having a low level of local taxing capacity. It is thereby consistent with the constitutional mandate that the legislature provide for a uniform system of public schools.” *Id.* at 201 (citing WASH. CONST. art. IX, sec. 2). In other words, the Court equated equalized funding with “equaliz[ed] educational opportunity,” which was consistent with the “mandate” to provide uniform schools in Article IX, section 2.

c. **The *McGowan* Court Held that the State Must Provide Reasonably Uniform Funding.**

Nor was *Seattle School District* the last time the Supreme Court held that Article IX, section 2 required the State to provide reasonably uniform funding. In *McGowan v. State*, 148 Wn.2d 278, 60 P.3d 67 (2002), this Court reiterated that the Washington Constitution requires reasonably uniform expenditures for basic education. The *McGowan* court struck down as unconstitutional the portion of an initiative that required the State to allocate basic education dollars to fund cost-of-living increases for school district staff that were not otherwise funded with basic education money. Because the amount of State basic education dollars that each district receives for such cost-of-living increases would vary depending on whether and how much non-State funding the district received for such employees, “over time the expenditure of the same kind of basic education dollars will be different in the two districts.” 148 Wn.2d at 294 (emphasis added).<sup>6</sup> The Court held that such variable distribution of State basic education dollars violates that Washington Constitution. *Id.*; see also *Brown v. State*, 155 Wn.2d 254, 269, 119 P.3d 341 (2005) (interpreting *McGowan* as holding that the portion of an

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<sup>6</sup> The State wholly ignores this language when arguing that *McGowan* does not require the State to allocate basic education dollars uniformly. See Appellants’ Opening Br. at 26-28.

initiative that would result in some districts “receiv[ing] more state funding than others” would “violat[e] the constitutional command that the State provide a general and uniform education”) (emphasis in original).

**3. The Court Should Not Adopt the Limited Interpretation of Article IX, Section 2 Advanced by the State.**

The State provides two different interpretations of Article IX, section 2, neither of which is correct.

At first, the State suggests that the first sentence in section 2 only imposed a one-time obligation on the Legislature to set up a school system, an obligation that the Legislature discharged in its first legislative session. *See* Appellants’ Opening Br. at 21. The only case the State cites to support this interpretation -- *Newman v. Schlarb*, 184 Wash. 147, 50 P.2d 36 (1935) -- does no such thing. The *Newman* court simply cited Article IX, section 2 to support the conclusion that funding the schools was a “state” rather than a “county” purpose. 184 Wash. at 152-55. *Newman* did not address the steps the Legislature must take to fulfill its duty to provide uniform schools.

Next, the State changes its view of the relevant sentence in section 2, and posits that it merely creates an obligation to define educational standards that the public schools must meet. *See* Appellants’ Opening Br. at 21-24. Here too, the State has failed to find case support.

The first case that the State cites, *Tunstall v. Bergeson*, 141 Wn.2d 201, 5 P.3d 691 (2000), does not have anything relevant to say on the nature of the Legislature's obligation under Article IX, section 2. The *Tunstall* court addressed whether RCW 28A.193 et seq., the statute that described the education to be provided to juvenile inmates, violated the Constitution, including sections 1 and 2 of Article IX. The Court held that the statute was constitutional because the education provided to incarcerated children may take into account the special needs of such children. 141 Wn.2d at 222-23.

In analyzing the Article IX claim, the *Tunstall* Court started by "outlin[ing] the general requirements of article IX," and in so doing, noted that section 2 imposes a duty on the State to "create a common school system." *Id.* at 221. However, in no way did the Court hold that creating the common school system was the only obligation imposed by section 2. To the contrary, the Court stated that the Legislature satisfied "part of its obligation under article IX through Title 28A RCW's 'Common School Provisions,' which includes the basic education act." *Id.* at 221 (emphasis added). Indeed, the *Tunstall* Court did not specifically discuss the "uniformity" aspect of the Legislature's obligation under Article IX, section 2; to the extent it gave any hints as to its view of this provision, the *Tunstall* Court indicated that it approved of the holding in *Seattle School*

*District* that Section 2 requires the State to provide reasonably uniform educational opportunity through its funding. *Id.* at 221-22 (citing to and quoting from *Seattle School District*). In short, the *Tunstall* court did not adopt the limited interpretation of section 2 that the State advocates.

Similarly, if the next case upon which the State relies, *School Dist. No. 20 v. Bryan*, 51 Wash. 498, 99 P. 28 (1909), has any relevance to this litigation, it is supportive of LEV Foundation's interpretation of section 2, not the State's. In *School District No. 20*, the Court held that the State could not use revenues dedicated to the "common schools" per the third sentence in Article IX, section 2, to fund a training school. 51 Wash. at 506. To reach this conclusion, the Court defined "common schools" and then concluded that the training schools did not fit within the definition. To define "common schools," the Court looked at the "the general scheme of education outlined in the Constitution," including but not limited to Article IX, section 2. *Id.* at 502. During this exercise, the Court noted that the public school system (of which the common schools are only one part) must be "uniform in that every child shall have the same advantages and be subject to the same discipline as every other child." *Id.*, quoted in Appellants' Opening Br. at 21. To the extent this comment has any bearing on the meaning of Article IX, section 2 (which is far from clear, contrary to the State's implication), it supports LEV Foundation's

interpretation that section 2 requires the State to provide reasonably uniform educational opportunity through its funding. How else can “every child [] have the same advantages”?

Lastly, the State relies heavily on the portion of *Northshore School District No. 417 v. Kinnear*, 84 Wn.2d 685, 530 P.2d 178 (1975), that has been overruled. *Northshore* held that the State meets the requirements of Article IX, section 2 if the education provided throughout the school system is sufficiently standardized to permit students to transfer among schools. 84 Wn.2d at 729. However, this interpretation of section 2 conflicts with the interpretation that the Court issued in sections IX and XI of *Seattle School District*, namely, that Article IX, section 2 requires the State to provide reasonably equal funding. *See Seattle School Dist.*, 90 Wn.2d at 521-22, 524-26; *id.* at 526 (“variations” in funding as a result of the dependence on levies violated the Constitution). At the end of sections IX and XI of the *Seattle School District* opinion, the Court specifically held that the decision in *Northshore* was overruled to the extent inconsistent with those sections. *Id.* at 522, 527.<sup>7</sup> Thus, the quote upon which the State relies is no longer good law.

<sup>7</sup> Even the State admits that *Seattle School District* overruled *Northshore* to the extent the latter opinion was inconsistent with sections IX and XI of the former opinion. Appellants’ Reply Br. at 8. Bizarrely, the State contends that Article IX, section 2 of the Constitution was not discussed in section XI of the *Seattle School District* opinion, which

In any event, even the *Northshore* court recognized that Article IX, section 2 requires the State to provide “a system which, within reasonable constitutional limits of equality, makes ample provision for the education of all children.” 84 Wn.2d at 728 (emphasis added). As the trial court held, this quote from *Northshore* means that the Legislature can only provide different amounts of funding for the school districts if this results from “differences in educational costs.” Opinion at 6. But as is discussed in the next section, it is beyond dispute that the differences in the amount of funding the State provides to the school districts stem not from “differences in educational costs” but rather arbitrary events and an unconstitutional funding method from thirty years ago, and a reluctance to make hard choices.

**B. The State Is Not Using a Uniform Method of Funding as Required by Article IX, Section 2 of the Washington State Constitution.**

**1. The Salary Allocations Are Not Uniform.**

It is undisputed that the Legislature does not provide reasonably uniform levels of funding to the school districts in Washington. To the contrary, there are 258 different funding levels for the State’s 295 school districts. And these discrepancies are substantial: in the 2006-07 school year, Federal Way School District received \$7,059,678 less in funding for

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is plainly incorrect. *Id.*; see *Seattle School Dist.*, 90 Wn.2d at 524-27 (section XI of the opinion discusses Article IX, section 2 twice).

staff salaries than it would have received had Federal Way been funded at the highest salary allocation level. CP 109-15. Making matters worse, the amount that Federal Way receives in salary allocations has a cascading effect, as it is used to establish the amount Federal Way receives for other purposes and also effects the amount the district can raise through levies. Thus, taking into account the cascading effect the salary allocations have, for 2006-07 Federal Way received \$11,279,027 less than it would have received if assigned to the highest salary allocation level. *Id.*

**2. There is No Rational Basis for the Funding Discrepancies.**

The record clearly establishes that the discrepancies in the salary allocations do not result from “differences in educational costs” or any other rational basis.

The salary allocations do not reflect the actual costs of retaining staff. For example, Federal Way was assigned a salary allocation of \$50,361 per unit of certificated administrators for the 2006-07 school year, \$44,125 less than the \$94,486 average salary for such employees in the District. CP 111, 115. The situation is reversed in the Skykomish School District, which receives more from the State than it needs to pay its certificated administrators. CP 115-16.

Nor do the differences result from socio-economic differences. For example, Federal Way School District received \$30,111 per unit of classified staff for 2007-08, which is \$3,370 less than its neighbor the Tacoma School District received, \$232 less than neighboring Auburn School District, and \$146 less than the Highline School District, another neighbor. CP 117-18.<sup>8</sup> Similarly, for the 2007-08 school year, the Index school district received \$2,766.00, \$504.33 less than the \$3,270.33 that nearby Skykomish received per student, see Opinion at 4.

Rather, the salary allocations are largely based on the amount the districts actually paid their employees back in 1976-77. CP 116. Not only do the salaries paid over 30 years ago have little to no relationship to current reality, importantly, the 1976-77 salaries were the result of an unconstitutional method for school funding. *Seattle School Dist.*, 90 Wn.2d at 526 (“[T]he statutory funding scheme extant during school year 1975-76 is unconstitutional.”)<sup>9</sup> The trial court aptly summed up the situation:

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<sup>8</sup> The State posits that it could simply drop all districts down to Federal Way’s salary allocation levels to comply with the Constitution. However, the Constitution makes ample provision for education a paramount duty of the State in Article IX, section 1. Dropping higher funded districts to Federal Way’s level would presumably violate section 1. Moreover, the lowest common denominator approach suggested by the State was endorsed in *Northshore*, see 84 Wn.2d at 713, 724, in a portion of that opinion that was overruled by *Seattle School District*. 90 Wn.2d at 514-27.

<sup>9</sup> The State repeatedly claims that the 1976-77 salaries were “market rates.” See, e.g., Appellants’ Opening Br. at 47. In reality, the rates reflected the districts’ ability to persuade voters to pass levies. CP 116.

[T]he disparities in the current system are not based on the cost of providing educational opportunity in any district. Instead the disparities are base[d] upon historic salary levels paid during the school year of 1976-77 when according to the Supreme Court of Washington, the State of Washington school funding system was not general and uniform.

Opinion at 607 (citing *Seattle School District*, 90 Wn.2d at 519).

Even the State does not argue that the funding discrepancies reflect the different costs of educating students in the districts. Rather, the only justification to which the State points is the difficulty of resolving the issue, such as the existence of competing funding priorities. *See* Appellants' Opening Br. at 48-50; *id.* at 42 (admitting that the current funding scheme is "the remnant of a partial step forward to resolve a complex funding problem"). However, this Court has already rejected the notion that budgetary pressures can justify violating Article IX, section 2. *Seattle School Dist.*, 90 Wn.2d at 526 (financial burdens "do[] not change the constitutional duty of the court or the Legislature").

As the trial court recognized, the fact that the Legislature has sporadically taken steps to make the salary allocation levels more uniform "stand[s] as an admission that there is no rational reason to continue this inequity." CP at 440 (Opinion at 8). The State has had over thirty years to

fix the funding discrepancies; the Constitution does not permit further delay.<sup>10</sup>

## V. CONCLUSION

Article IX, section 2 of the Washington Constitution requires the Legislature to provide a “uniform system of public schools.” Fulfilling this duty requires the use of a reasonably uniform method of funding basic education. Under no set of circumstances are the salary allocations that the Legislature relies upon to determine the amount of money the districts receive constitutional. The 258 different salary allocations do not result from differences in the cost of educating students in the districts, but rather are the result of a school funding method struck down as unconstitutional over 30 years ago by this Court in the *Seattle School District* decision. LEV Foundation joins Respondents in asking the Court to affirm the decision of the trial court, holding that the salary allocations violate Article IX, section 2 of the Constitution.

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<sup>10</sup> That the Legislature has attempted (unsuccessfully) to equalize funding does not mean that this Court should not or cannot address the constitutionality of the current method of school funding. “The ultimate power to interpret, construe and enforce the constitution of this State belongs to the judiciary.” *Seattle School Dist.*, 90 Wn.2d at 496.

RESPECTFULLY SUBMITTED this <sup>8<sup>th</sup></sup> day of May, 2009.

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CERTIFICATE OF SERVICE

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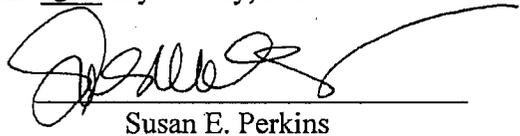
I, Susan E. Perkins, hereby certify and declare under penalty of perjury under the laws of the State of Washington that on May 8, 2009, <sup>CLERK</sup>

I caused a copy of the foregoing document to be served upon the following counsel of record in the manner indicated:

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Executed at Seattle, Washington, this 8 day of May, 2009.

  
Susan E. Perkins

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